

29 October 1951

OGC HAS REVIEWED.

The Honorable Lindsay C. Warren
Comptroller General of the United States
Washington, D. C.

Dear Mr. Warren:

This Agency is currently engaged in the recruitment of individuals who have considerable experience and acquaintanceship in foreign countries. Many retired Foreign Service officers possess the qualifications desired, but there appears to be some question regarding their authority to accept appointment to full-time positions with other agencies of the Federal Government. One of the retired Foreign Service officers presently under consideration by this Agency was retired for age, and is in receipt of an annuity exceeding \$2,500.00 per year.

Section 2 of the act of July 31, 1894, 28 Stat. 205, codified as 5 U.S.C. 62, provides:

"No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specifically authorized thereto by law; but this shall not apply to retired officers of the Army or Navy whenever they may be elected to public office or whenever the President shall appoint them to office by and with the advice and consent of the Senate. Retired enlisted men of the Army, Navy, Marine Corps or Coast Guard who have been retired for injuries received in battle or for injuries or incapacity incurred in line of duty shall not, within the meaning of this section, be construed to hold or to have held an office during such retirement."

In 16 Comp. Gen. 121, it was held there was no prohibition of law against the reemployment of a Foreign Service officer retired for disability. In that case, however, the retired Foreign Service Officer was in receipt of an annuity of less than \$2,500.00 per year. One case under consideration by this Agency differs in two respects: (1) the retired foreign service officer is in receipt of an annuity exceeding \$2,500.00 per year, and (2) he was retired for a reason other than disability.

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If such retired Foreign Service officers may be appointed to other Government offices, another question arises concerning concurrent payments of annuities. While suspension of the annuity is not within this Agency's province, it would be helpful if some advice could be given to prospective employees concerning the effect of reemployment upon their annuities.

A Foreign Service officer reinstated in the Service is entitled, while so serving, to receive in lieu of his retirement allowance the full pay of the class in which he is temporarily serving. (Section 671 of the Foreign Service Act of 1946, 22 USCA 1111). Similarly, a general principle of law was explained in the decision of 13 Comp. Gen. 24, as follows: "In no case may both retirement annuity and civilian compensation be paid to the same person for the same period of time." It has been held that this principle is applicable "to any reemployment in any capacity in the Government civil service which may be counted toward longevity in computing retirement annuity, including service with Government-owned corporations." (14 Comp. Gen. 285, at 288). The problem was also discussed in 23 Comp. Gen. 664.

Your decision, therefore, is requested in the following circumstances:

1. May a Foreign Service officer, retired for age, and in receipt of an annuity exceeding \$2,500.00 per year, be appointed to a full-time position with another agency of the Federal Government?
2. May a Foreign Service officer, retired for disability or incapacity and in receipt of an annuity exceeding \$2,500.00 per year, be appointed to a full-time position with another agency of the Federal Government?
3. May a Foreign Service officer, retired upon his own application (under Sec. 636 of the Foreign Service Act of 1946) and in receipt of an annuity exceeding \$2,500.00 per year, be appointed to a full-time position with another agency of the Federal Government?
4. May a Foreign Service officer, "selected out" (under the provisions of Sec. 637 of the Foreign Service Act of 1946) and in receipt of an annuity exceeding \$2,500.00 per year, be appointed to a full-time position with another agency of the Federal Government?
5. If any retired Foreign Service officer enumerated above may be appointed to a full-time position with another agency

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of the Federal Government, may he continue to receive his annuity concurrently with the salary of his full-time position?

Sincerely,

Walter B. Smith
Director

OOC/JJB/McD